

II. CABLE SERVICES COMPETITION.

13. The Minneapolis-St. Paul MSA is primarily served by one major cable Multi Service Operator ("MSO") – Comcast.²¹ In April 2005, as part of a \$17.6 billion bid to purchase the assets of Adelphia Communications (which was operating under Chapter 11 bankruptcy protection). Comcast and Time Warner Cable announced an agreement to exchange cable properties—an exchange that included the transfer of Time Warner Cable's properties in Minneapolis to Comcast.²² As a result of this transaction, Comcast announced that it would add 193,000 Time Warner Cable subscribers in Minneapolis to its 345,000 subscribers in the St. Paul and northwestern suburban areas to become the dominant cable provider in the Minneapolis-St. Paul MSA. The transfer of the Minneapolis cable franchise to Comcast was approved by the Minneapolis City Council in July 2006, and today Comcast serves approximately 600,000 households in the Minneapolis-St. Paul MSA with cable television, telephony and/or high-speed internet service.²³

14. A detailed map of Comcast's network in the Minneapolis-St. Paul MSA is proprietary and not available to Qwest. However, the "Comcast Spotlight" map presented on the Comcast website (see Exhibit 1, page 1) clearly shows that Comcast's

²¹ Some Qwest wire centers, especially in the Lake Minnetonka area, are served by Comcast and Mediacom. And, as discussed later in this declaration, Charter Communications and U S Cable each serve a limited number of smaller communities within the **MSA**.

²² <http://www.bizjournals.com/twincities/stories/2005/04/18/daily54.html>. See Exhibit 1, Page 4.

²³ Estimates based on Comcast Spotlight map of Minneapolis-St. Paul coverage area—Exhibit 1, Page 1. See: http://www.comcastspotlight.com/www/common/media/minneapolis_st_paul/Maps/CSTCMapZ111.pdf.

cable coverage area in the Minneapolis-St. Paul Designated Market Area ("DMA")²⁴ encompasses nearly all of the Minneapolis-St. Paul MSA, and indicates that Comcast serves customers in 48 of the 58 Qwest wire centers in the MSA.²⁵ In fact, according to this Comcast media coverage map, the Comcast network serves Qwest wire centers that contain over [REDACTED] of Qwest's residential lines and approximately [REDACTED] of Qwest's switched business lines in the Minneapolis-St. Paul MSA.²⁶

Comcast has reported that nationally, it provides cable service to 24.2 million of the 45.7 million homes it passes, for a penetration rate of 51.3%.²⁷ Assuming this same penetration rate holds true for Comcast in the Minneapolis-St. Paul MSA, its network would pass approximately 1.2 million homes.²⁸

15. Comcast Digital Voice ("CDV") service, which utilizes VoIP technology, is available to virtually all of its customers in the Minneapolis-St. Paul MSA,²⁹ and Comcast is marketing its CDV offering aggressively, as described below. With 1.2

²⁴ On its "Comcast Spotlight" website, Comcast reports its media coverage area and the number of cable households in the Minneapolis-St. Paul Designated Market Area ("DMA"). DMA is a term commonly used in the media industry to define geographic coverage areas for advertising purposes. The data provided as Exhibit I, page 1, includes a map of Comcast's coverage area in the Minneapolis-St. Paul DMA, along with the number of cable households in each geographic zone within the DMA. This data is offered to potential advertisers as a representation of the geographic reach advertisers can expect when using the Comcast network to distribute advertising, and represents a reasonable approximation of Comcast's network facilities footprint within the Minneapolis-St. Paul DMA.

²⁵ Some Qwest wire centers, especially in the Lake Minnetonka area, are also served by Mediacom.

²⁶ Source: Qwest Forecast Data Mart data as of December 2006.

²⁷ Comcast 10K, filed with the SEC on February 28, 2007, page 3.

²⁸ This estimate is derived as follows: 600,000 households served / 0.513 penetration rate = 1,169,591 homes passed.

²⁹ Prior to transferring its facilities to Comcast, Time Warner Cable had been offering digital phone service to its cable customers in Minneapolis. Comcast began offering CDV to its St. Paul area customers in early 2006.

million homes passed in the Minneapolis-St. Paul MSA, if Comcast achieves its goal of a 20% CDV penetration level by 2009 (see below). this would equate to over 200,000 CDV customers. These phone service customers are served entirely via Comcast-owned network facilities. as Comcast does not rely on Qwest wholesale network elements in the provision of its telephone services.

16. Comcast's CDV offering has been growing rapidly on a national basis, and this growth is accelerating. In 2006, Comcast senior leadership expressed highly optimistic prospects for growth in its digital voice telephone operations over the next three years.

John Alchin, co-Chief Financial Officer for Comcast stated:

"In that time frame, it is entirely conceivable and even probable that we could add 10 million phone customers." "

In September 2006, Comcast reported that it was expecting to add 1.3 million to 1.4 million digital phone customers nationally for the year versus the 1 million additions it had previously estimated." However, Comcast's success with its Digital Voice product in 2006 actually *exceeded* these projections; Comcast added over *1.5 million* digital phone customers for the year. "

³⁰ <http://www.marketwatch.com/news/story/comcast-confident-cable-phone-war/story.aspx?guid=!F8C09A0C-9A88-4057-AD62-3917AB81D79F1>. See Exhibit 1, Page 5.

³¹ <http://www.multichannel.com/article/CA6374497.html>. See Exhibit 1, Page 7.

³² *Comcast Reports 2006 Results and Outlook for 2007, Announces 3-for-2 Stock Split*, Press Release issued February, 1, 2007, Table 6. See Exhibit 1, Page 11.

According to its Fourth Quarter 2006 Report. Comcast has a nationwide subscriber base of 2.5 million telephone subscribers, with 1.86 million CDV subscribers and 652,000 circuit switched telephone customers.³³ Comcast reported rapidly accelerating CDV growth throughout 2006. Following growth of 232,000 subscribers in the first quarter, 326,000 subscribers in the second quarter, and 483,000 subscribers in the third quarter, Comcast added 508,000 CDV customers in the fourth quarter of 2006.³⁴ In describing Comcast's 2006 performance, Chairman and CEO Brian Roberts proclaimed:

2006 was simply our best year ever. Powered by our triple play offering and superior products, we added more RGUs [i.e., revenue-generating units] than at any other time in our history and reported terrific growth in cable revenue and Operating Cash Flow. This record-setting performance demonstrates substantial operating momentum; and we could not be more enthusiastic about the future."

By year end 2007, Comcast plans to have CDV service available to 40 million homes nationally, and projects that it will provide CDV to 8 million—or 20%—of these customers by 2009.³⁶ Comcast has reported that the company's Digital Voice service was driving the adoption of other products, with 80% of its CDV customers also purchasing cable and high speed internet."

³³ *Id.*

³⁴ Citigroup Entertainment, Media and Telecommunications Conference. Presentation of Comcast, January 9, 2007: page 11; see: <http://www.veracast.com/webcasts/citigroup/emt07/05103689.cfm>. See Exhibit I, Page 26.

³⁵ *Comcast Reports 2006 Results and Outlook for 2007, Announces 3-for-2 Stock Split*, Press Release issued February, 1, 2007, Page 1. See Exhibit I, Page 11.

³⁶ Citigroup Entertainment, Media and Telecommunications Conference. Presentation of Comcast, January 9, 2007: page 11; see: <http://www.veracast.com/webcasts/citigroup/emt07/05103689.cfm>. See Exhibit I, Page 26.

³⁷ *Id.*

17. Comcast currently offers its CDV service, which is provided via VoIP technology,'* to residential customers served via the Comcast network at a standard price of \$39.95 for customers already subscribing to Comcast cable television and high speed internet service. For customers with either Comcast cable television service or high speed internet service. Comcast prices its CDV service at \$44.95 per month. If the customer wishes to subscribe only to CDV service. Comcast's monthly rate for the service is \$54.95. Comcast Digital Voice service includes unlimited local and long distance calling (including free long distance calls to Canada) plus 12 standard calling features.'" Comcast has also been aggressively promoting its "triple play" bundle of Comcast Digital Cable, Comcast High-speed Internet and Comcast Digital Voice to *new* customers in the Minneapolis-St. Paul area (other promotions are available for existing customers). Comcast's promotional rate for this bundled package is \$99.00/month for 12 months, after which time the price increases to \$135.38.⁴⁰ In addition. Comcast has recently been using direct mail advertising in the Minneapolis-St. Paul area to offer its CDV service at a price of \$29.95 for 4 months.⁴¹ This particular promotion appears to be targeted to select customers. and is offered on a limited-time basis.

³⁸ While Comcast uses VoIP technology in providing telephone services, Comcast requires its digital telephone subscribers to use Comcast's coaxial loop network. Comcast's telephone service is not offered to any subscriber **that** subscribes to broadband service from a provider other than Comcast.

³⁹ See Exhibit 1. Page 45.

⁴⁰ http://www.comcast.com/shop/buy_flow/default.ashx. See Exhibit 1. Page 49.

⁴¹ See Exhibit 1. Page 59.

18. While Comcast has traditionally marketed its services to residential consumers, this focus is now expanding. Comcast recently announced that its "next great business opportunity" is to sell internet, voice and video services to small and medium sized businesses.⁴² On August 7, 2006, Comcast announced the appointment of Mr. William Stemper as president of Comcast Business Services. In announcing Mr. Stemper's appointment, Dave Watson, Executive Vice President of Operations for Comcast stated:

I'm thrilled that he will lead Comcast's continued efforts as we leverage our unparalleled network to deliver video, voice and data services for the business marketplace."

Comcast states that its target is to capture 20% of the phone market in five years, resulting in \$12 to \$15 billion in additional revenues. Comcast also announced that it would invest \$250 million in 2007 and \$3 billion over five years to serve these business customers.⁴⁴

On March 21, 2007, Comcast announced the opening of a call center in Centennial, Colorado, that will serve as "one of two facilities nationwide dedicated to the company's small business clientele"⁴⁵ in Minneapolis-St. Paul and elsewhere. According to Comcast, the center will initially be staffed with 100 employees, with room to expand to

⁴² Comcast defines this market as businesses with less than 20 employees

⁴³ http://www.cmcsl.com/phoenix.zhtml?c=147565&p=irol-newsarticle_pf&ID=892959. See Exhibit 1, Page 60.

⁴⁴ Citigroup Entertainment, Media and Telecommunications Conference, Presentation of Comcast, January 9, 2007; pages 12-13: <http://www.veracast.com/webcasts/citigroup/emt07/05103689.cf>. See Exhibit 1, Page 26. Also, see "Comcast CEO says next target is businesses," Philadelphia Inquirer, January 11, 2007. See Exhibit 1, Page 61.

⁴⁵ http://www.rockymountainnews.com/drmn/tech/article/0,2777,DRMN_23910_5431464,00.html. See Exhibit 1 Page 62.

400 employees.⁴⁶ In making this announcement. Jim Erickson, Comcast's vice president of business services for the west division stated:

The Centennial office will play an integral part in the nation's largest cable company's plans to offer a bundle of phone, Internet and video services to the estimated 5 million small businesses in its territory. Comcast already offers Internet and pay TV to businesses but will ramp up efforts when it launches phone service later this year.⁴⁷

Clearly, Comcast is already positioning itself to pursue its "next great business opportunity."

19. Comcast's commitment to the Minneapolis-St. Paul area is illustrated by its announcement on March 14, 2007 that it would be adding 200 jobs in the Minneapolis-St. Paul area, representing an 11% increase in its existing workforce of 1,800 in the Twin Cities.⁴⁸ Comcast advised that the new jobs would be in "direct and commercial sales, communication technology and customer service in the call centers."⁴⁹

20. Finally, Comcast and other cable providers are now moving into the wireless market. Comcast, along with Time Warner Cable, Cox Communications and Advanced Newhouse are involved in a joint venture with Sprint Nextel to provide integrated mobile phone service to their cable customers."⁵⁰ Comcast began offering the Sprint Nextel

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ <http://www.bizjournals.com/twincities/stories/2007/03/12/daily30.html>. See Exhibit 1, Page 63.

⁴⁹ *Id.*

⁵⁰ http://news.com.com/2100-1039_3-6147061.html. See Exhibit 1, Page 64.

wireless service in Boston and Portland in 2006. and plans to expand to other areas in 2007 (Comcast has not yet publicly revealed its wireless implementation plan for the Minneapolis-St. Paul MSA).⁵¹ This arrangement allows Comcast to fill a gap in its product portfolio, and will enable Comcast to offer the "quadruple play" bundle of services to customers. consisting of video, broadband internet access. digital telephone and wireless service. Since customers clearly prefer one-stop shopping for their communications services, this arrangement is a tool for Comcast to drive up penetration rates for all services in the bundle.

Comcast sees mobility as a way to add more convenience and value to its customer base. In an article on C/Net, Toni Nagel, senior vice president and general manager for wireless at Comcast. stated "There is no question that wireless ties all of our services together. The idea is you can take the services you enjoy at home with you when you're on the go using a mobile device."⁵² According to this article, Comcast's initial launch "will allow customers to access their e-mail, cable TV guide and home voice mail from their cell phones. They'll offer some video content on their phones that would otherwise be available only at home. Eventually. the cable companies want to allow customers to be able to do things like program their DVRs remotely from their handsets."⁵³

⁵¹ http://biz.yahoo.com/indie/061130/458_id.html?v=1. See Exhibit 1, Page 66.

⁵² http://news.com.com/2100-1039_3-6147061.html. See Exhibit 1, Page 64.

⁵³ *Id.*

21. Independent industry analysts identify ILEC access line losses to cable telephony providers as significant and continuing. For example, Fitch Ratings states:

The competitive impacts of technological change remained intense, as expected, in 2006 and this should continue in 2007. Cable multiple system operators (MSOs) have aggressively rolled out digital telephony services using voice over Internet protocol (VoIP) technology that has increased retail access line erosion of incumbent local exchange carriers (ILECs). The scale of this erosion, which is expected to reach a total of approximately 6 million, representing cable telephony net additions in 2006 of more than 3 million, has increased with the widespread availability of cable telephony and its associated multi-service bundles.⁵⁴

Like the majority of cable MSOs, Comcast has deployed VoIP technology to support continued growth in its digital telephone market segment. Industry analyst Light Reading states:

North American cable operators are now signing up an average of about 11,000 new customers a day for IP phone service, up from 9,900 customers per day in the first quarter. Although impressive, that's not too surprising given that all three of the biggest cable IP phone players - Time Warner Cable, Cablevision Systems and Comcast - are now signing up close to 10,000 or more subscribers every week."⁵⁵

Clearly, Comcast and other cable service providers see the provision of telephone service as a key ingredient in their strategy to expand the customer base and improve revenue streams by driving up the number of customers purchasing multiple services in addition to basic cable television service.

⁵⁴ Regulatory Event Risk Headlines Fitch's U.S. Telecom Outlook for 2007, November 29, 2006. See Exhibit 1, Page 68.

⁵⁵ http://www.lightreading.com/document.asp?doc_id=108862&print=true. See Exhibit 1, Page 76.

22. While Comcast is the dominant cable provider. Mediacom, Charter, and U S Cable each serve some customers in the Minneapolis–St. Paul MSA. Mediacom provides cable, high speed internet and phone service to portions of the west and southwest suburbs of the Minneapolis-St. Paul MSA, including the area around Lake Minnetonka. Monthly prices for *Mediacom Phone* service (with 14 features and unlimited nationwide calling) are \$29.95 for customers that also order both cable and high speed internet, \$39.95 for customers ordering cable or high speed internet, and \$49.95 for customers ordering a la carte.⁵⁶ Charter provides cable service to customers in the northwest portion of the MSA including the Qwest exchanges of Buffalo and Elk River, and now offers telephone service to customers in these two exchanges. Charter is currently promoting phone service as part of a package that also includes digital cable and high speed internet services for an introductory “Charter Bundle” price of \$99.97.⁵⁷ U S Cable serves some north and northeast suburban areas of the Minneapolis-St. Paul MSA—such as Forest Lake, Isanti and Cambridge—that in total represent less than 3% of Qwest's access lines in the Minneapolis-St. Paul MSA. U S Cable does not as yet offer its own telephone service, but it does provide broadband internet service, enabling its customers to purchase VoIP telephone services from independent VoIP providers.

III. CLECs

⁵⁶ <http://www.mediacomcc.com/phone.html>. See Exhibit 1, Page 78.

⁵⁷ <http://www.charter.com/Visitors/LocalArea.aspx?zipcode=55330> and <http://www.charter.com/Visitors/LocalArea.aspx?zipcode=55313>. See Exhibit 1, Page 80

23. In addition to Comcast, as of December 31, 2006 there are over [REDACTED] unaffiliated CLECs currently offering telephone services in competition with Qwest in the Minneapolis-St. Paul MSA. Of these CLECs, [REDACTED] are providing service to customers via their own non-Qwest network facilities, [REDACTED] are providing service utilizing UNE Loops, [REDACTED] are providing service using the Qwest Platform Plus ("QPP")⁵⁸ finished wholesale service and [REDACTED] are reselling Qwest retail services.⁵⁹ It is important to note that CLECs utilizing non-Qwest network facilities, QPP/QLSP and/or resale *are not reliant upon Qwest UNEs* to provide service to their customers.

24. CLECs are utilizing Qwest wholesale services to compete with Qwest in every wire center in the Minneapolis-St. Paul MSA. Highly Confidential Exhibit 2 shows the distribution of Qwest wholesale services purchased by CLECs as of December 2006, segmented by residential and business line categories. Since Qwest has no means of determining the type of retail service CLECs provide to end users when they purchase stand-alone⁶⁰ UNE-L and Enhanced Extended Loop ("EEL") services, these wholesale services are attributed to the "business" category in this summary.⁶¹ It is important to note that the data in Highly Confidential Exhibit 2 excludes any CLEC access lines served via: (1) CLEC-owned loop and switching network facilities, (2) Special Access

⁵⁸ Qwest Local Services Platform ("QLSP") is the Qwest wholesale service that replaces QPP service as Qwest/CLEC QPP commercial agreements expire. Qwest signed QLSP agreements with several CLECs in late 2006 and early 2007. However, based on those agreements, the conversion of QPP lines to QLSP lines **began** after January 1, 2007. Thus, Qwest's December 2006 wholesale in-service tracking data includes QPP lines, but not QLSP lines.

⁵⁹ Qwest wholesale tracking systems, December 2006.

⁶⁰ In this context, "stand-alone" means UNE-L that is not purchased in conjunction with QPP or QLSP service.

⁶¹ The bulk of UNE Loops are purchased by CLECs that market their services almost exclusively to business customers. Thus, it is reasonable to attribute UNE Loops to the business category.

service purchased from Qwest. or (3) network facilities leased from non-Qwest providers, and therefore represents only a subset of CLEC lines in service in the Minneapolis-St. Paul MSA.

25. To the extent CLECs are utilizing their own networks to serve residential and business customers in the Minneapolis-St. Paul MSA, Qwest has no means to obtain precise in-service access line counts. However, Qwest does track the number of white pages listings, by rate center, for CLECs that are “facilities-based” (those utilizing CLEC-owned switches and loops, such as Comcast, and/or those utilizing CLEC-owned switches and unbundled loops or Special Access services purchased from Qwest), and Qwest can use this information to estimate the number of lines served by such CLECs.⁶² Based on white pages listings data as of January 2007, there are approximately [REDACTED] business lines and [REDACTED] residential lines associated with facilities-based CLECs in the Minneapolis-St. Paul MSA rate centers. Following is a brief overview of several CLECs now serving the Minneapolis-St. Paul MSA, with particular emphasis on CLECs that utilize their own facilities,

36. AT&T, the largest telecom company in the U.S., offers a wide range of telecommunications services to all classes of residential, small business and enterprise

⁶² About 75% of Qwest’s residential lines and 36% of its business lines *are* listed in the white pages directories. Qwest assumes the CLECs’ customer bases will have similar listings per line ratios, and estimates facilities-based CLEC lines on this basis. Note that business customers often elect to list only their primary telephone number in the white pages directory, so that there are significantly more business lines than business white pages listings. To the extent customers of facilities-based CLECs do not request that their telephone numbers be included in the Qwest white pages listings database, these telephone numbers are not reflected in the facilities-based CLEC customer white pages listings at all.

business customers in the Minneapolis-St. Paul MSA. According to its website, AT&T provides solutions designed to meet all personal communications needs (at home and on the go) as well as the needs of small, medium, large and global businesses and governmental entities.

AT&T is a significant provider of wireless services, and offers wholesale services to other carriers.” In addition, AT&T has expanded its product reach by offering its CallVantage VoIP service—which bypasses Qwest's switched voice network—to any customer in the Minneapolis-St. Paul MSA with a broadband connection.⁶⁴ AT&T also offers one of the most extensive VoIP service portfolios for businesses, thereby “enabling enterprises to migrate seamlessly between traditional and next-generation services.”⁶⁵ According to GeoTel, AT&T has over [REDACTED] route miles of fiber within the Minneapolis-St. Paul MSA. This fiber may be used to provide a wide range of voice and data services to customers without relying on the purchase of Qwest wholesale services.⁶⁶

27. Integra is a facilities-based CLEC providing a range of services to small and enterprise business customers, including basic business voice lines, long distance

⁶³ <http://att.com/gen/landing-pages?pid=3308>. See Exhibit 3, Page 1.

⁶⁴ <http://www.consumer.att.com/>. See Exhibit 3, Page 2.

⁶⁵ <http://www.att.com/gen/investor-relations?pid=5711>. See Exhibit 3, Page 3.

⁶⁶ GeoTel fiber route data, October 2006.

services, T-1 services. voice/data integrated services, features, private line services, internet access. etc.⁶⁷ In describing itself, Integra states:

Integra Telecom, Inc. is a facilities-based. integrated communications carrier. dedicated to providing a better choice for businesses in eight western states. It owns and operates a best-in-class carrier network...the company serves nearly 400,000 lines in the metropolitan areas of Arizona, California, Idaho, Minnesota, North Dakota, Oregon, Utah and Washington. In contrast to companies that simply resell services from the monopoly Regional Bell Operating Companies (RBOC), Integra owns and operates its own network offering local dial tone, domestic and international long distance, high speed Internet and data services (including digital subscriber line or DSL), voice messaging, and numerous ancillary services designed to support the communications needs of businesses.⁶⁸

On March 20, 2007, Integra Telecom, Inc. announced that it has entered into an agreement to purchase Minneapolis-based Eschelon, pending governmental and shareholder approvals expected in the third quarter of 2007. At that time, Integra estimates that combined Integra/Eschelon revenues will be approximately \$700 million annually and that the combined companies will "serve an average of 20 percent of the businesses in the metropolitan areas in which they operate," which includes the Minneapolis-St. Paul MSA.⁶⁹ Since Integra and Eschelon remain separate entities until the transaction is finalized, this declaration will discuss the market characteristics of the current Integra and Eschelon separately.

⁶⁷ <http://www.integratelecom.com/products/default.asp>. See Exhibit 3, Page 5.

⁶⁸ <http://www.integratelecom.com/about>. See Exhibit 3, Page 6.

⁶⁹ http://www.integratelecom.com/about/news/news_releases/2007/2007-03-20_news_release.asp. See Exhibit 3, Page 7.

On August 1, 2006, Integra acquired Electric Lightwave, which is a fiber-based carrier serving 23 metropolitan areas, including Minneapolis.⁷⁰ In discussing its acquisition of Electric Lightwave, Integra stated:

Through its acquisition of Electric Lightwave in 2006, Integra owns and operates an eight-market, 2,200 route mile (160,000 fiber miles) metropolitan area network, with direct fiber access into over 580 major commercial buildings. Many other competitive local exchange carriers are scrambling to find network alternatives in response to recent FCC rules that increase the cost of leasing network from the Bell companies. Integra, by acquiring Electric Lightwave's metropolitan area network, becomes one of the first to insulate itself from this unpredictable landscape of telecom regulation.⁷¹

According to GeoTel, Integra/ELI has approximately [REDACTED] route miles of fiber within the Minneapolis-St. Paul MSA.⁷²

Interestingly, on September 26, 2006, Integra announced the results of business "market share" research conducted for Integra by Riley Research Associates during July and August 2006 in seven MSAs, including the Minneapolis-St. Paul MSA. The results of this research (which do not appear to account for the presence of intermodal competition) estimated that Qwest held 42% of the business market while the combination of Comcast, Global Crossing (fka Frontier), Eschelon, AT&T, McLeod, Integra (prior to the ELI acquisition), POPP, Verizon and Sprint held 39% of the business market. All other

⁷⁰ <http://www.chronline.com/companyprofile.asp?guid=49F7BD2A-4127-4D50-B861-BF3564259926&CType=Background>. See Exhibit 3, Page 9.

⁷¹ http://www.integratelecom.com/about/network_and_facilities.asp. See Exhibit 3, Page 11

⁷² GeoTel fiber route data, October 2006.

CLECs held 19% of the business market.⁷³ While not dispositive, Integra's own data shows a significant level of competition in the business telecom market in the Minneapolis-St. Paul MSA, and Integra is well positioned with its acquisition of facilities-based Electric Lightwave (and in the future, Eschelon) to make even greater inroads into the small business and enterprise business markets in the area

28. Headquartered in Minneapolis, Eschelon is a major facilities-based CLEC providing services to small and enterprise business customers in a number of markets in the western U.S., including the Minneapolis-St. Paul MSA. As noted above, Integra has announced its intention to purchase Eschelon.

In describing its operations, Eschelon states:

Eschelon Telecom, Inc. is a facilities-based competitive communications services provider of voice and data services and business telephone systems in 45 markets in the western United States. Headquartered in Minneapolis, Minnesota, the company currently employs approximately 1,400 telecommunications/Internet professionals, serves over 60,000 business customers and has in excess of 570,000 access lines in service throughout its markets in Arizona, California, Colorado, Minnesota, Montana, Nevada, Oregon, Utah and Washington.⁷⁴

Eschelon offers a broad range of voice and data services to small and enterprise business customers, including local exchange service, digital T-1 services, digital PBX trunks,

⁷³ http://www.integratelecom.com/about/news/news_releases/2006/2006-09-26_news_release.asp. See Exhibit 3, Page 11. The Integra-sponsored survey appears to base its Qwest and CLEC business market share estimates on the number of customers, whereas TNS estimated Qwest's share of the small and enterprise business markets based on revenues. (See Section I, ¶7 of this declaration.)

⁷⁴ http://www.eschelon.com/about_us/section_detail.aspx?itemID=8311&catID=220&SelectCatID=220. See Exhibit 3, Page 15.

long distance service, integrated voice/data services and a wide range of features.” Additionally, in late 2005, Eschelon introduced its “Precision Flex-Pak” VoIP service, which is provided over its own managed network. By June 2006, Eschelon reported that its “Precision FlexPak” service was exceeding sales expectations and represented 37 percent of the company’s total lines sold.⁷⁶ In November 2006, Eschelon announced that its percentage of backhaul facilities carried over company-owned fiber had reached 52 percent, and predicted that this percentage would continue to grow as the company initiated the next phase of its network expansion.”

29. Level 3 is an international communications and information services company that has traditionally operated primarily as a major ‘carriers’ carrier,” offering wholesale telecom services to other communications providers. However, today Level 3 also offers a wide range of communications services to small and enterprise business customers, including internet Protocol (“IP”) services: broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. Level 3 touts its scalable, cost-effective, state-of-the-art optical network as being “ideal for communications-intensive companies“. The company also asserts that “few providers

⁷⁵ <http://www.eschelon.com/voice/index.aspx> and <http://www.eschelon.com/internet/index.aspx>. See Exhibit 3, Page 17.

⁷⁶ http://www.eschelon.com/about_us/section_detail.aspx?itemID=7588&catID=6885&SelectCatID=6885. See Exhibit 3, Page 19.

⁷⁷ http://www.eschelon.com/about_us/section_detail.aspx?itemID=8311&catID=220&SelectCatID=220. See Exhibit 3, Page 15.

own the amount of available fiber infrastructure that Level 3 owns" and that as a consequence, "feu can claim to be as accommodating of future customer growth."⁷⁸

Level 3 has established a specific marketing organization, the Level 3 Business Markets Group, to focus specifically on serving the small and enterprise business markets—a strategy that has been enhanced through Level 3's January 2007 acquisition of Broadwing Corporation. Broadwing operated as a CLEC serving small and enterprise business customers in a variety of U.S. markets, including the Minneapolis-St. Paul MSA. In discussing its Broadwing acquisition: Level 3 stated:

The acquisition of Broadwing is consistent with both the Level 3 wholesale market strategy as well as our more recent entry into the enterprise market. We believe the combination of Level 3 and Broadwing will create value for our investors through the elimination of duplicative network and operating costs, the addition of a solid revenue base, and a further strengthening of our financial position. Broadwing has made great strides with national enterprise customers as a result of their strong product portfolio and national sales teams. This creates an exciting opportunity for us to leverage both of these capabilities to accelerate the growth of Level 3's Business Markets Group."

Level 3 has also partnered with Covad to deliver VoIP telecom services to the small and medium business market." This Covad-branded service is now available to any Minneapolis-St. Paul MSA customer with a broadband Internet connection, and represents a direct substitute for Qwest's retail voice services. With its acquisition of

⁷⁸ <http://www.level3.com/576.html>. See Exhibit 3, Page 21.

⁷⁹ <http://www.level3.com/newsroom/pressreleases/2006/20061017.html>. See Exhibit 3, Page 22.

⁸⁰ <http://www.level3.com/newsroom/pressreleases/2006/20060912a.html>. See Exhibit 3, Page 25

Hroadwing. Level 3 now owns and operates a 39,500 mile fiber network.*' including over [REDACTED] fiber miles in Qwest wire centers in the Minneapolis-St. Paul MSA.⁸²

30. McLeodUSA is a facilities-based CLEC providing a range of services to small and enterprise business customers in nearly 500 cities in 20 states. Based on the map posted to its website, McLeodUSA offers services to the following communities in the Minneapolis-StPaul MSA: Anoka. Blaine, Bloomington, Buffalo, Bumsville, Coon Rapids. Cottage Grove. Crystal. Eagan, Elk River, Forest Lake, Fridley. Maplewood, Minneapolis. Oak Grove. Plymouth. Shakopee, St. Paul. and Stillwater.⁸³ McLeodUSA describes itself as a provider of "integrated solutions for:

- Traditional local and long-distance services (including VoIP);
- High-speed broadband Internet access (up to 60 Mbps);
- Data networking solutions (e.g., VPN services, facilities leasing)."⁸⁴

McLeodUSA's current product offerings are the result of a major business strategy shift that was announced by the company in June 2006. At that time, McLeodUSA began re-focusing the company's offerings around dynamic IP-based integrated voice and data broadband solutions for single and multi-location small and enterprise businesses, which it manages over "one of the largest competitive. fiber-dense networks in the nation."'' In addition to its new focus on IP integrated services, McLeodUSA stated that it was also

⁸¹ http://www.level3.com/about_us/index.html. See Exhibit 3, Page 26.

⁸² Source: GeoTel, October 2006.

⁸³ <http://www.mcleodusa.com/CoverageArea.do>. See Exhibit 3, Page 28.

⁸⁴ <http://www.mcleodusa.com/CompanyInformation/CorporateProfile.do>. See Exhibit 3, Page 29.

⁸⁵ <http://www.mcleodusa.com/InvestorRelations/PressRoom.do>. Press Release issued June 5, 2006. See Exhibit 3 Page 30.

“rapidly expanding its distribution channels and sales partners to help fuel market growth.”⁸⁶ In October 2006, McLeodUSA introduced an expanded product suite of wholesale local voice and carrier data offerings, stating that it would leverage its “pervasive fiber-optic network” of 18,000 route miles and 650 central office collocations to provide both traditional and IP-based wholesale services.” According to GeoTel, McLeodUSA has approximately [REDACTED] route miles of fiber within the Minneapolis-St. Paul MSA.⁸⁸

31. POPP.com, which recently changed its name from POPP Telecom Corporation, is a privately owned, facilities-based CLEC serving thousands of business customers in three states, including Minnesota.” POPP.com is headquartered in Golden Valley, Minnesota, which is within the Minneapolis-St. Paul MSA.⁹⁰ The company offers a full range of voice and data services and Internet access to businesses in the Twin Cities, including local business lines: long distance, DSL, T1s, and Primary Rate Interface (“PRI”) trunks.

32. TDS Metrocom is a facilities-based CLEC providing local, long distance and high-speed Internet services to “friends, neighbors and businesses” in communities

⁸⁶ *Id.*

⁸⁷ <http://www.mcleodusa.com/InvestorRelations/PressRoom.do>. Press Release issued October 9, 2006. See Exhibit 3, Page 33.

⁸⁸ GeoTel fiber route data, October 2006.

⁸⁹ <http://www.popp.com/profile.cfm>. See Exhibit 3, Page 36.

⁹⁰ <http://www.popp.com/contact.cfm>. See Exhibit 3, Page 37.

throughout five states, including the Minneapolis-St. Paul MSA in Minnesota.” TDS Metrocom is a wholly owned subsidiary of Telephone and Data Systems, Inc. (“TDS”), which also owns TDS Telecom, an ILEC serving customers in 30 states.⁹² In addition, TDS owns 82 percent of U.S. Cellular, the nation’s sixth largest wireless service provider.” TDS Metrocom primarily focuses on the small and enterprise business markets, and offers a wide range of telecommunications services including stand-alone business voice service, business local service packages, dedicated high capacity services, digital trunks, ISDN, long distance, dedicated Internet access, etc.⁹⁴

55. XO Communications provides both retail business and wholesale telecommunications services in the Minneapolis-St. Paul MSA. XO describes itself as a “full-service provider of communications services for small and growing businesses, larger enterprises and carriers” that owns “a wealth of local fiber, DSL, fixed wireless, data networking, Internet and long-haul network assets.”” Minneapolis-St. Paul is among the 75 major U.S. metropolitan markets served by XO, and represents a major network node within XO’s 18,000-mile national fiber network.^{96,97} XO announced in October 2006 that it had aligned its businesses into two major segments—XO Business Services

⁹¹ <http://www.tdsmetro.com/About.aspx> and <http://www.tdsmetro.com/SelectArea.aspx>. See Exhibit 3, Page 38.

⁹² http://www.teldta.com/tds_ourcompanies.html. See Exhibit 3, Page 41.

⁹³ *Id.*

⁹⁴ <http://www.tdsmetro.com/Default.aspx>. See Exhibit 3, Page 42.

⁹⁵ <http://www.xo.com/about/ourstory/>. See Exhibit 3, Page 43.

⁹⁶ http://telephonyonline.com/ftp/marketing/comptel_xo_wholesale_100906/. See Exhibit 3, Page 44.

⁹⁷ http://www.xo.com/about/network/maps/complete_normal.html. See Exhibit 3, Page 45.

and XO Carrier Services—to reflect its focus on both retail and wholesale customers.”⁹⁸ XO provides a wide range of local services for retail and wholesale customers, including basic voice business lines, business trunks, Centrex service, voice messaging, ISDN-PRI, directory assistance, foreign exchange service, long distance services, etc.⁹⁹ In addition to its traditional voice services, XO actively promotes its VoIP-based services provided via its XOptions Flex product line.”” In addition, Nextlink, XO’s wireless broadband service division, now offers a wide range of wireless broadband private line services, including DS3, OC-3 and OC-12 services to enterprise and wholesale customers in major markets including Minneapolis. These offerings compete directly with high capacity services offered by Qwest.””

34. In the Minneapolis-St. Paul MSA, the CLECs described above are squarely focused on delivering competitive local exchange services to an increasing share of retail customers, while at the same time *reducing their reliance on UNEs purchased from Qwest*. The CLECs are realizing this goal by self-provisioning network facilities (either by wireline or wireless means), purchasing network capacity from other carriers (described later in this declaration), or by purchasing finished services such as Qwest Platform Plus or Qwest Local Services Platform from Qwest via business-to-business contractual arrangements.

⁹⁸ http://telephonyonline.com/ftp/marketing/comptel_xo_wholesale_100906/. See Exhibit 3, Page 44.

⁹⁹ <http://www.xo.com/products/smallgrowing/voice/local/index.html>. See Exhibit 3, Page 46.

¹⁰⁰ <http://www.xo.com/products/smallgrowing/integrated/>. See Exhibit 3, Page 48.

¹⁰¹ http://www.nextlink.com/livefiles/ServiceGroups/1/Service_Providers.pdf. See Exhibit 3, Page 49.

IV. SPECIAL ACCESS.

35. Special Access service can be utilized as a substitute for unbundled network elements. In fact, many landline-based competitors are purchasing Special Access services purchased from Qwest today in order to serve customers in the Minneapolis-St. Paul MSA. As of December 2006, competitors purchased over [REDACTED] Voice Grade Equivalent (“VGE”) lines in the Minneapolis-St. Paul MSA.¹⁰² Of these VGEs, almost [REDACTED] are based on DS1 Special Access, over [REDACTED] are based on DS3 Special Access, and the remainder are based on OCn and other Special Access services. While Qwest does not have direct knowledge of the services CLECs provide to their customers via Special Access services, the fact that a significant proportion of Special Access services sold by Qwest to CLECs in the Minneapolis-St. Paul MSA are at a DS1 and above level suggests they are being utilized to serve enterprise customers, who typically have the need for a large number of access lines and/or telecommunications bandwidth capacity. The number of Voice Grade Equivalent circuits provided by competitors using Special Access services in the Minneapolis-St. Paul MSA exceeds the number of VGE circuits provided by CLECs using unbundled network elements, Qwest Platform Plus and resale combined. In addition, revenues for Qwest Special Access provided to competitors in the Minneapolis-St. Paul MSA for the month of August, 2006,

¹⁰² VGEs represent equivalent voice channels: for example, a DS1 is equivalent to **24 voice** channels, a DS3 is equivalent to 672 voice channels, an OC3 is equivalent to 2016 voice channels, and an OC12 is equivalent to **8064** voice channels. Special Access data is drawn from Qwest’s wholesale tracking systems and reflects data vintage December 2006.

were over [REDACTED]. It is clear that carriers are utilizing Special Access services very broadly in providing telecom services in the Minneapolis-St. Paul MSA.

36. It is also worth noting that, while Special Access is provided by Qwest throughout the Minneapolis-St. Paul MSA, competitive fiber has also been placed in most of these wire centers, as discussed in the following section of our declaration. This fiber can be used as an alternative to the purchase of Qwest Special Access services. In fact, almost [REDACTED] of the Special Access VGEs in the Minneapolis-St. Paul MSA are in wire centers that also have competitive fiber in place.

V. FIBER-BASED COMPETITORS.

37. A significant amount of fiber optic cable has been placed by competitive service providers in the Minneapolis-St. Paul MSA that can be used to bypass Qwest's network. According to GeoTel,¹⁰³ approximately [REDACTED] miles of fiber (excluding fiber owned by Qwest and Qwest's affiliates) have been placed in the Minneapolis-St. Paul MSA, and this fiber is owned by approximately 45 unaffiliated entities.¹⁰⁴ Based on the 2006 GeoTel data, at least one fiber-based competitor has facilities in [REDACTED] of

¹⁰³ "GeoTel Communications, Inc. is the leading provider of telecommunications infrastructure data in a geographic information system (GIS). GeoTel's unique business strategy implements and converges the mapping of telecommunications fiber and other telecommunications infrastructure with GIS technologies. These two items integrated into one digital data set gives leverage and insight into the competitive metropolitan fiber optic landscape across America." http://www.cmcstore.com/productcat/pc/viewCat_h.asp?idCategory=66.

¹⁰⁴ GeoTel continually works to update its data regarding fiber-based competitors and provides updated data approximately every six months. However, GeoTel does not possess complete data regarding each fiber-based competitor, and the data reported above is therefore likely understated. GeoTel data underlying the numbers above was provided to Qwest in October 2006.

Qwest's wire centers in the Minneapolis-St. Paul MSA. and these wire centers contain over [REDACTED] of Qwest's retail residential lines and over [REDACTED] of Qwest's retail business lines in the MSA. In addition, non-Qwest fiber is now being used to serve over [REDACTED] buildings in the Minneapolis-St. Paul MSA.¹⁰⁵

38. According to the GeoTel data, some of the most significant alternative telecom fiber providers in the Minneapolis-St. Paul MSA include [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED].¹⁰⁶ Additionally, a public-private partnership known as Connecting Minnesota owns over [REDACTED] route miles of fiber in the Minneapolis-St. Paul MSA¹⁰⁷, and the Minnesota Department of Administration, which is a party to this partnership, owns an additional [REDACTED] route miles of fiber within the MSA.^{108, 109} According to a summary of this partnership posted to the website of the national Council for Public-Private Partnerships, Connecting Minnesota assigns 20% of its network capacity to state and local governments telecommunications users, while the remaining 80% of network capacity is "available for lease to telephone companies, long-distance

¹⁰⁵ Source: GeoTel, October 2006.

¹⁰⁶ *Id.*

¹⁰⁷ <http://ncppp.org/cases/minnesota.shtml>. See Exhibit 4, Page 1

¹⁰⁸ *Id.*

¹⁰⁹ Source: GeoTel, October 2006.